IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

O.P.No.11219 of 2001(I)

PETITIONERS:-
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1. THOMAS MATHEW, HIL VIEW, PULAMAN, KOTTARAKKARA.

2. JOLY THOMAS, DO. DO. DO.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM
SRI.LATHEESH SEBASTIAN

RESPONDENTS:-
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1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

2. THE TAHSILDAR, KOTTARAKKARA TALUK,
KOTTARAKKARA, KOLLAM DISTRICT.

3. ASSISTANT COLLECTOR, KOLLAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONERS' EXHIBITS:-

EXT.P1 - TRUE COPY OF THE SALE DEED DATED 18.4.1990 IN THE NAME OF THE 1ST PETITIONER.

EXT.P2 - TRUE COPY OF THE SALE DEED DATED 28.4.1990 IN THE NAME OF THE 1ST PETITIONER.

EXT.P3 - TRUE COPY OF THE SALE DEED DATED 4.5.1990 IN THE NAME OF THE 2ND PETITIONER.

EXT.P4 - TRUE COPY OF THE AGREEMENT BETWEEN THE PETITIONERS IN THE O.P. DATED 21.6.1993.

EXT.P5 - TRUE COPY OF THE NOTICE BEARING NO.A8.18690/96 DATED 23.10.96 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.

EXT.P6 - TRUE COPY OF THE STATEMENT SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DATED 5.11.96.

EXT.P7 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 22.5.97 BEARING NO.A8.18690/96.

EXT.P8 - TRUE COPY OF THE JUDGMENT IN O.P.NO.8431/97-D DATED 10.6.97 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.P9 - TRUE COPY OF THE RECEIPT FOR PAYMENT OF RS.58500/- ISSUED BY THE VILLAGE OFFICER, KOTTARAKKARA VILLAGE DATED 24.6.97.

EXT.P10 - TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONERS BEFORE THE REVENUE DIVISIONAL OFFICER, KOLLAM DATED 24.6.97.

EXT.P11 - TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT BEARING NO.L-8306/97/D.DIS. DATED 14.3.2001.

RESPONDENT'S EXHIBITS:

NIL.

- TRUE COPY -

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 11219 OF 2001

Dated this the 9th August, 2007

JUDGMENT

H.L.DATTU, C. J.

The first petitioner is the husband of the second petitioner. The first petitioner is the owner of 13 ¼ cents of land in Kottarakkara Village. The adjacent 9 cents of land was purchased by the second petitioner in 1990. The two plots having an extent of 22 ¼ cents remained as a contiguous area. The petitioners constructed a building in the said land with four separate apartments.

2. The Tahsildar, who is the competent authority under the provisions of the Kerala Building Tax Act, has completed the assessments treating the building as a single unit and has levied building tax in a sum of Rs.2,34,000/-, as per Ext.P7 assessment order. Petitioners question the same by filing Ext.P10 appeal before the third respondent, Assistant Collector, Kollam. The third respondent has rejected the appeal by Ext.P11 order dated 14.3.2001. Therefore, the petitioners are before this Court in this Original Petition.

3. If for any reason, the petitioners are aggrieved by Ext.P11 order, they can file an appropriate Revision Petition before the District Collector. Without exercising that remedy, the petitioners have approached this Court for the following reliefs:

> "i) call for the records relating to Exts.P7 and P11 from the respondents;
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> ii) to quash Exts.P7 and P11 by the issue of a writ of certiorari or other appropriate writ, direction or order;

ii) issue a writ of mandamus commanding the respondents to re-assess the buildings Tax for the buildings of the petitioners accepting that there are 4 separate apartments assessable separately; "

4. Since the right of statutory revision is provided in the Act itself, in our opinion, the petitioners would not have approached this Court by filing this Original Petition, without exercising that remedy. Therefore, we pass the following:

O R D E R

1) The Original Petition is disposed of.

2) If for any reason, the petitioners are aggrieved by Ext.P11 order of the Appellate Authority, they are permitted to prefer an appropriate Revision before the District Collector, within thirty days from today. If such a Revision is filed within the time granted by this Court, the revisional authority shall consider the same on merits without reference to the period of limitation.

3) Consequent to the order passed in the Original Petition, C.M.P.No.18019 of 2001 is dismissed.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.NO. 11219 OF 2001

JUDGMENT

9th August, 2007